No. 94-226

SUPREME COURT, U.S.
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In the

Supreme Court of the United States

October Term, 1994

THE FLORIDA BAR,

Petitioner,

v.

G. STEWART McHENRY, WENT FOR IT, INC., a Florida Corporation, JOHN T. BLAKELY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF THE NEW YORK STATE BAR ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

G. ROBERT WITMER, JR., ESQ.
President, New York State Bar Association
One Elk Street
Albany, New York 12207
(518) 463-3200
Counsel of Record

(Of counsel attorneys listed inside front cover)

BEST AVAILABLE COPY

Of Counsel:

ROBERT J. PEARL, ESQ.
400 Andrews Street, Suite 210
Rochester, New York 14604

SHARON STERN GERSTMAN, ESQ.
50 Delaware Avenue
Buffalo, New York 14202

KATHLEEN R. MULLIGAN BAXTER, ESQ.
One Elk Street
Albany, New York 12207

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INTEREST OF *AMICUS CURIAE*

Amicus Curiae, the New York State Bar Association ("NYSBA"), is a voluntary bar association primarily composed of members of the bar of the State of New York. The NYSBA has approximately 56,000 members, including lawyers who are engaged in the practice of law in the private and public sectors, as well as judges, professors and law students, and is the largest

voluntary state bar association in the United States.

The NYSBA seeks to promote rules concerning advertising by attorneys which are fair and equitable, and which encourage the development of such advertising as would provide the public with meaningful information concerning the availability and provision of legal services. This case provides this Court with an opportunity to give guidance to bar associations and regulatory authorities which seek to implement advertising rules, and is therefore of great interest to the members of the NYSBA.

SUMMARY OF ARGUMENT

Since the decision of this Court in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), entities with authority over the regulation of attorney conduct have sought to regulate lawyer advertising in an effort to protect the public from improper influence and to protect the image of the legal profession. It is the position of the NYSBA that *Bates* and subsequent cases do not provide regulatory authorities with clear guidance as to permissible regulation of lawyer advertising, and the NYSBA urges this Court to provide a clear statement of what constitutes appropriate time, place or manner regulation of lawyer advertising.

ARGUMENT

Since the decision of this Court in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), state bar associations and other entities with jurisdiction over lawyer conduct have attempted to regulate advertising for reasons ranging from protection of the image of the profession to protection of the public from improper influence. Many of these attempts have resulted in a striking of such regulations by this Court, *Peel v. Attorney Registration and Disciplinary Comm'n of Illinois*, 496 U.S. 91 (1990); *Shapero v. Kentucky Bar Association*, 486 U.S. 466 (1988); *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of*

Ohio, 471 U.S. 627 (1985); *In the Matter of R.M.J.*, 455 U.S. 191 (1982);or by lower federal courts, *Moore v. Morales*, 843 F. Supp. 1124 (S.D. Tex. 1994) and the instant case.

As a result of the *Bates* decision and subsequent cases, regulatory authorities have been provided with numerous examples of impermissible restrictions on lawyer advertising, but have not been provided with a clear statement of what would constitute appropriate time, place or manner restrictions on lawyer advertising. As a result, advertising which is considered by many to be sensational, exploitive or devoid of any meaningful information has proliferated. It is the NYSBA's belief that such advertising has contributed, at least in part, to the public's eroding faith in the justice system and to the public's negative impression of the legal profession.

The NYSBA believes that the public interest would be well served by the development of a clear statement regarding time, place and manner restrictions on lawyer advertising which also protects attorneys' First Amendment rights relating to such advertising. The NYSBA currently is undergoing a study of appropriate measures to reduce advertising with little or no informational purpose, and is anxious for the assistance of this Court in that regard.

CONCLUSION

This Court has a unique opportunity to give guidance to bar associations and regulatory authorities which have enacted or are considering enactment of regulations relating to lawyer advertising. The NYSBA urges this Court to fully consider the issue of lawyer advertising and solicitation and provide a clear statement of appropriate time, place or manner restrictions on lawyer advertising.

November 8, 1994

Respectfully submitted,

G. ROBERT WITMER, JR., ESQ.
President, New York State Bar Association
One Elk Street
Albany, New York 12207
(518) 463-3200
Counsel of Record

Of Counsel:

ROBERT J. PEARL, ESQ.
400 Andrews Street, Suite 210
Rochester, New York 14604

SHARON STERN GERSTMAN, ESQ.
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Albany, New York 12207